STATE OF MICHIGAN

COURT OF APPEALS

JACQUELINE LUCIDO,

Plaintiff-Appellant,

v

MACOMB COUNTY EMPLOYEES RETIREMENT SYSTEM,

Defendant-Appellee.

UNPUBLISHED
July 20, 2001

No. 219232
Macomb Circuit Court
LC No. 98-001957-CK

Before: White, P.J., and Sawyer and Saad, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition, thereby upholding defendant's decision to deny plaintiff's application for duty disability benefits under a county retirement ordinance. We affirm.

Plaintiff argues that the decision to deny her application is not supported by competent, material, and substantial evidence. We disagree.

A trial court's decision granting summary disposition is reviewed de novo. *Allen v Keating*, 205 Mich App 560, 562; 517 NW2d 830 (1994). Because the court considered evidence outside the pleadings, we review its decision under MCR 2.117(C)(10). *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999); MCR 2.116(G)(5). A motion may be granted under MCR 2.116(C)(10) when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455 n 2; 597 NW2d 28 (1999).

Decisions of municipal administrative agencies are reviewed under the substantial evidence test. See Const 1963, art 6, § 28; *In re Payne*, 444 Mich 679, 687-694; 514 NW2d 121 (1994). "When reviewing the decision of an administrative agency for substantial evidence, a court should accept the agency's findings of fact if they are supported by that quantum of evidence." *Payne*, *supra* at 692. "A court will not set aside findings merely because alternative findings also could have been supported by substantial evidence on the record." *Id.* "Substantial evidence" means "the amount of evidence that a reasonable mind would accept as sufficient to support a conclusion." *Id.* "While it consists of more than a scintilla of evidence, it may be substantially less than a preponderance." *Id.*

> What the drafters of the Constitution intended was a thorough judicial review of administrative decision, a review which considers the whole record—that is, both sides of the record—not just those portions of the record supporting the findings of the administrative agency. Although such a review does not attain the status of de novo review, it necessarily entails a degree of qualitative and quantitative evaluation of evidence considered by an agency. Such review must be undertaken with considerable sensitivity in order that the courts accord due deference to administrative expertise and not invade the province of exclusive administrative fact-finding by displacing an agency's choice between two reasonably differing views. Cognizant of these concerns, the courts must walk the tightrope of duty which requires judges to provide the prescribed meaningful review. [*MERC v Detroit Symphony Orchestra*, 393 Mich 116, 124; 223 NW2d 283 (1974).]

"The role of the reviewing court is to ensure that the [county's] employees receive what they have been promised by reviewing whether there was substantial evidence to support the agency's factual determinations." *Payne*, *supra* at 695.

When applying for disability benefits, plaintiff submitted medical evidence showing that she was disabled due to post-surgery pain in her lower back and legs. This included the opinion of an independent doctor, who stated that he "doubt[ed] that she will ever be able to return to this job in the future." Defendant's medical director agreed that plaintiff was disabled, but was unable to conclude that her disability was permanent, because there was no evidence that plaintiff had attempted any course of treatment, apart from taking pain medication, to attempt to relieve her pain following surgery. While it may be reasonable to conclude that plaintiff's pain was permanent because it did not disappear on its own after surgery, it was also reasonable to conclude that plaintiff failed to show that the pain was permanent because she did not attempt any progressive steps to alleviate it. On this record, the commission's choice between reasonably differing views is supported by competent, material and substantial evidence and, therefore, may not be overturned. *Payne*, *supra* at 692-695.

Affirmed.

/s/ Helene N. White
/s/ David H. Sawyer
/s/ Henry William Saad